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July 23, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Study on PIN Debit Transaction Fees, Docket No. OP-1196

Dear Ms. Johnson:

Bank of America Corporation ("Bank of America") appreciates the opportunity to comment in response to the notice of study and request for information ("Notice") by the Board of Governors of the Federal Register on May 24, 2004. Bank of America is one of the world's leading financial companies, and is the sole shareholder of Bank of America, N.A. and Fleet National Bank. The two banks serve 33 million consumer relationships with 5,700 retail banking offices, more than 16,000 ATMs and online banking with more than ten million active users.

The Notice solicits comment on whether the existing disclosures required by the Electronic Fund Transfer Act and Regulation E adequately inform consumers of fees imposed by the account-holding institution when debit cards are used for point-of-sale ("POS") transactions. The Notice also seeks comment on whether there is a need to require additional disclosures on periodic statements to reflect fees imposed by account-holding institutions for debit card usage and whether there is a need to disclose the amount, source and recipient of each fee imposed.

General Statement

We believe that the current disclosures required under Regulation E provide consumers with sufficient information to understand the costs of using their account to make electronic funds transfers (EFTs), including POS transactions, and to make informed choices about whether to use PIN-based transactions or signature-based transactions. These disclosures are required at three different times: (1) in initial disclosures under Section 205.7; (2) on periodic statements under Section 205.9(b); and (3) on receipts provided at an electronic terminal, under certain circumstances described in Section 205.9(a), when an electronic fund transfer (EFT) is initiated.

Financial institutions must already provide consumers with a full disclosure in the initial agreement of any fees that may be charged to the consumer's account, including differences (if any) for PIN-based transactions and signature-based transactions. The periodic statement sent to the consumer must include the amount of any fees assessed against the account for making EFTs. Those fees can be shown individually or in an aggregate amount, but the presence of the fees on the statements reminds consumers of the fact that fees are assessed and, with the initial disclosures, the consumers can identify the transactions that triggered those fees. They can then change their behavior and usage of their accounts if they wish.

If the consumer initiates an EFT at a POS terminal, Regulation E already requires that the financial institution make available a receipt to the consumer through the terminal operator. That receipt must include: the amount of the transfer, the date, the type of transfer, identification of the account or access device, the terminal location, and the identity of any third party to whom funds are transferred. The receipt must also disclose any transaction fee imposed by the account-holding institution if is included in the amount of the transfer. In that case, the terminal operator knows the amount of the fee imposed by the account-holding institution and it is practical to show it on the receipt.

We believe that all of these disclosures, in combination, provide effective notice of the circumstances under which an account-holding institution will impose a fee, if applicable, when the consumer uses a debit card to make a purchase at a POS.

Difficulties of Providing Additional PIN Debit Fee Disclosures at POS

Adding real-time PIN debit transaction fee disclosures at the POS would require substantial modifications to systems and hardware at enormous cost. Any increase in the information provided to the consumer regarding these fees does not justify the cost and there would be an unreasonable financial burden on the entire payment industry. The steps involved in making the change include: (1) each of the financial institutions would need to include fee information in their data files sent across the networks; (2) each of the networks would need to be able to carry the specific fee data to communicate with the POS terminal; (3) all of the different software packages that drive transactions would need to be modified; and (4) the POS terminals or other devices at each location would need to be replaced or modified to accept the specific fee information related to the specific account. All of these modifications would need to identify differences from issuer to issuer and differences among accounts within a single issuer. Each of the systems modified must be capable of changes as pricing changes.

We have made a rough estimate of what it would cost just one of our banks, Bank of America, N.A., to perform two of the steps described above. To change the multiple software programs that operate different types of terminals (which vary depending upon the type of industry, the functionality, and the manufacturer) would cost approximately $200,000. The operational cost to down-load changes to each of the thousands of devices that this bank controls that are PIN-enabled would cost approximately $1,750,000.

To illustrate the difficulty in identifying the specific fee to a specific account in real-time, consider that fee structures at a single issuer may depend upon many factors, possibly including average balance, relationship with the financial institution, whether there is direct deposit, and whether there is a rewards program. Whether or not a fee is imposed may depend upon activity throughout the cycle, so that it is not known at the time of the transaction whether or not the fee will ultimately be imposed.

We believe that the disclosure at the POS may be awkward and confusing to the merchant and to the consumer. The consumer may expect the merchant to explain the fee. The consumer is typically entering a PIN at a PIN pad and often the PIN pad does not provide for interactive communication with the consumer. If the consumer needs to be told the fee and then given a choice whether or not to continue, the transaction may need to reach the network twice, potentially doubling the cost.

For all of these reasons, we believe the minimal benefits of requiring real-time disclosure of PIN debit transaction fees at the POS are far outweighed by the enormous costs and difficulty involved in doing so.

Difficulties of Providing Additional Disclosures on Periodic Statements

The Notice has asked us to address whether the periodic statement should reflect some or all of the following: the amount of each fee imposed by the account-holding financial institution on the consumer in connection with a debit card transaction at POS, the source and recipient of any such fee, and a summary of the total amount of such fees for that reporting period and calendar year-to-date.

All of these additional disclosures would add to the length of periodic statements and increase the cost of providing the statements. They would also distract from other information that has already been determined to be important on the statement. For example, if each fee must be itemized, the statement may be pages longer than before and many of the fees could be identical. Adding to the length and complexity to the periodic statement is not likely to help consumers make the appropriate decisions about how and when to use their accounts.

Summary

Bank of America believes that existing disclosures adequately inform a consumer of fees imposed by the financial institution that holds the consumer's account and has issued a debit card. The benefits of any additional disclosures are outweighed by the costs and difficulties of providing them.

Bank of America appreciates the opportunity to comment on this matter. If you have any questions about the issues raised in this letter, please contact the undersigned.

Sincerely,

Mary A. Price
Assistant General Counsel
Bank of America, N.A.